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Issue Date: 05 September 2007

CASE NO.: 2007-LHC-01278

OWCP NO.: 01-161576

In the Matter of

B. E.[1]
Claimant

v.

ELECTRIC BOAT CORPORATION
Employer / Self-Insurer

and

DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS
Party-in-Interest

Appearances:

Carolyn P. Kelly (O'Brien, Shafner, Stuart, Kelly & Morris, P.C.).
Groton, Connecticut for the Claimant

Mark P. McKenney (McKenney, Quigley, Izzo & Clarkin),
Providence, Rhode Islamd, for the Employer

Before: Daniel F. Sutton, Administrative Law Judge

DECISION AND ORDER GRANTING SUMMARY DECISION AND DISMISSING CLAIM

I. Introduction

[1] In accordance with the Claimant Name Policy, which became effective on August 1, 2006, the Office of Administrative Law Judges uses a claimant's initials in published decisions in lieu of the claimant's full name. *See* Mem. from John M. Vittone, CJ, Claimant Name Policy (July 3, 2006) *available at* http://www.oalj.dol.gov/PUBLIC/RULES_OF_PRACTICE/REFERENCES/MISCELLANEOUS/CLAIMANT_NAME_POLICY_PUBLIC_ANNOUNCEMENT.PDF.

The above matter arises from a claim brought under the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. § 901, *et seq*. (the "LHWCA"), seeking workers' compensation benefits for a disability allegedly caused by multiple injuries that the Claimant sustained in the course of her employment as a janitor in the Employer's shipyard. On August 16, 2007, the Employer, Electric Boat Corporation ("EBC"), moved for entry of summary decision on the ground that the Claimant was not a maritime worker covered under section 902(3) of the LHWCA. On August 30, 2007, the Claimant filed an opposition to EBC's motion, averring that her janitorial duties were sufficiently related to EBC's shipbuilding work to constitute maritime employment covered by the LHWCA.[2]

II. Discussion

Under the Office of Administrative Law Judges' Rules for Practice and Procedure for Administrative Hearings, any party may "move with or without supporting affidavits for a summary decision on all or any part of the proceeding." 29 C.F.R. § 18.40(a) (2004). Section 18.40 of the OALJ Rules is analogous to Rule 56 of the Federal Rules of Civil Procedure. *Buck v. General Dynamics Corp*., 37 BRBS 53, 54 (2003) (*Buck*). The purpose of the summary decision procedure is to promptly dispose of actions in which there is no genuine issue as to any material fact. *Id.* (citing *Donahue v. Windsor Locks Board of Fire Commissioners*, 834 F.2d 54 (2d Cir. 1987)). A party opposing a summary decision motion may not rest on the mere allegations or denials of the motion but must "set forth specific facts showing that there is a genuine issue of fact for the hearing." 29 C.F.R. § 18.40(c); *Buck*, 37 BRBS at 55. An administrative law judge "may enter summary judgment for either party if . . . there is no genuine issue as to any material fact and [the] party is entitled to summary decision." 29 C.F.R. § 18.40(d). A fact is material and precludes a grant of a summary decision if proof of that fact would have the effect of establishing or refuting one of the essential elements of a cause of action or a defense asserted by the parties. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp*., 475 U.S. 574, 587 (1986). In determining whether a genuine issue of material fact exists, the evidence and factual inferences must be viewed in the light most favorable to the non-moving party. *Id.* However, if the non-moving party "fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial," there is no genuine issue of material fact and the moving party is entitled to summary judgment. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-323 (1986).

In support of its motion, EBC relies on the Claimant's deposition testimony concerning her duties and the affidavit of her supervisor. EBC points out that the Claimant testified her job as a janitor involved mopping, dusting, vacuuming and taking trash out of bathrooms and offices. EBC Memorandum in Support of Respondent's Motion for Summary Decision ("EBC Mem. in Supp.") at 3. It additionally states that her supervisor confirmed in his affidavit that the Claimant performed her janitorial job on land and that her duties did not involve the loading, unloading construction, or repairing of maritime vessels. *Id*. EBC contends that the undisputed facts thus

[2] The Director, Office of Workers' Compensation Programs, which is an interested party due to EBC's request for liability relief from the Special Fund pursuant to section 8(f) of the LHWCA has not entered an appearance or answered EMC's motion for summary decision.

demonstrate that the Claimant was a land-based janitor with no specific nexus to the shipbuilding process and that its motion for summary decision should be granted as a matter of law. *Id*. at 5.

The Claimant responded with an affidavit in which she states that during the week prior to her injury, her job as a janitor required her "to clean the cafeteria and the bathrooms located in Building 197 which were used by employees coming from their work on the submarines." Claimant Affidavit at ¶ 2. The Claimant further states that she worked on Saturdays and "cleaned the bathrooms which are located in the yard and used by the workers who are building and repairing submarines. These bathrooms are located in the Seawolf area, and Buildings 8 North and 8 South." *Id*. at ¶ 3. She contends that these duties were essential to the shipbuilding and repair process and therefore sufficient to provide her with maritime status under the LHWCA. Claimant's Opposition ("Cl. Opp.") at 2-3 (citing *Chesapeake and Ohio Railway Co. v. Schwalb*, 492 U.S. 40 (1989) (*Schwalb*) and *Watkins v. Newport News Shipbuilding and Dry Dock Co*., 36 BRBS 21 (2002)). The Claimant also submitted a "Statement of Undisputed Material Facts" in which she states,

> 1. This is a claim for medical benefits, permanent partial disability, permanent and total disability and underpayment of temporary total disability based on an injury to Claimant's right hip, right elbow, right knee and back which occurred after a fall on the ice on January 19, 2005.
>
> 2. The Claimant, at the time of the injury, was working as a janitor cleaning offices, the cafeteria and bathrooms in the Seawolf area.
>
> 3. On January 24, 2005, the Employer filed a Form LS-1 authorizing treatment for the Claimant under the Longshore and Harborworkers' Compensation Act. (Exhibit 1 attached hereto and made a part of hereof.)
>
> 4. On February 11, 2005, the Employer submitted a Form LS-208 indicating a termination of payments which had been made under the Longshore Act from January 20, 2005 to February 1, 2005. (Exhibit 2 attached hereto and made a part of hereof.)
>
> 5. At the request of Claimant's attorney, on August 15, 2005 the District Director scheduled an informal conference on the issue of medical treatment on September 28, 2005. (Exhibit 3 attached hereto and made a part of hereof.)
>
> 6. The issue of medical treatment was resolved prior to the informal conference.
>
> 7. On January 9, 2007, counsel for the Claimant requested an emergency informal conference on the issue of permanent partial disability and permanent total disability which was scheduled on February 28, 2007.
>
> 8. The parties advised the hearing examiner that there was no prospect for a resolution of the claim and counsel for the Claimant filed an LS-18 on March 16, 2007.

9. Claimant has prior injuries in 1996 and 1998 for which she qualifies both as to "situs" and "status" under the Longshore Act and has been paid under the Longshore Act for those injuries.

10. During the week, the Claimant cleaned the cafeteria and its bathrooms which are located in Building 197. On Saturdays she cleaned the bathrooms which are located in the yard and used by the workers who are building and repairing submarines.

Cl. Opp. at 1-2. In addition to arguing that her janitorial duties were essential to the shipbuilding process and thus covered by the LHWCA, the Claimant asserts that EBC, by previously paying her benefits under the LHWCA, is now equitably estopped from alleging that she was not a covered maritime worker because she relied on EBC's conduct in not pursuing a state claim for benefits. *Id.* at 5-6.

A. Equitable Estoppel

Under the doctrine of equitable estoppel, "a party may be estopped from pursuing a claim or defense where: 1) the party to be estopped makes a misrepresentation of fact to the other party with reason to believe that the other party will rely on it; 2) and the other party reasonably relies upon it; 3) to her detriment." *Kosakow v. New Rochelle Radiology Assocs*., 274 F.3d 706, 725 (2d Cir.2001).[3] Assuming, without finding, that the Claimant can satisfy the first two criteria for invocation of the doctrine, she has not shown that she relied to her detriment on EBC's conduct in voluntarily paying her benefits under the LHWCA. In this regard, the Claimant states that she filed an initial claim for her injuries under the State of Connecticut Compensation Act, and she asserts that she "relied upon Employer's conduct to her detriment by not pursuing a State compensation claim or engaging in certain activities which would have protected her rights under the State Compensation Act." Cl. Opp. at 6. However, she had not shown that she is now foreclosed from pursuing her state compensation claim, and she has not identified any action necessary to protect her rights under Connecticut law that she failed to take in reliance on EBC's conduct. "[T]he party invoking the principle of estoppel has the burden of proving that he has acted to his detriment in reliance upon what the other party had done." *Freedman v. the Concordia Star*, 250 F.2d 867, 869 (2d Cir. 1958). The Claimant has not met this burden and, therefore, she cannot prevent EBC from raising the maritime status issue as a defense to her claim under the LHWCA.

B. Maritime Status

The concept of maritime status is grounded in section 2(3) of the LHWCA which defines the term "employee" as "any person engaged in maritime employment, including any

[3] The Claimant cites *Rambo v. Director, OWCP*, 81 F.3d 840 (9th Cir. 1996), *vacated on other grounds*, 521 U.S. 121 (1997), where the Court enumerated the following elements for invocation of the doctrine: (1) the party to be estopped must know the facts; (2) he must intend that his conduct shall be acted on or must so act that the party asserting the estoppel has a right to believe it is so intended; (3) the latter must be ignorant of the facts; and (4) he must rely on the former's conduct to his injury. 81 F.3d at 843.

longshoreman or other person engaged in longshoring operations, and any harbor-worker including a ship repairman, shipbuilder, and ship-breaker" but not including specific categories of employment not relevant to the instant case. 33 U.S.C. § 902(3). In the case of a worker who is employed in an occupation not expressly included or excluded from section 2(3)'s definition, "land-based activity will be deemed maritime only if it is an integral or essential part of loading or unloading a vessel." *Schwalb*, 492 U.S. at 45. The injured workers in *Schwalb* were laborers at a railroad coal terminal who performed janitorial services, including the clearing of spilled coal from loading equipment, and a machinist who repaired coal loading equipment. *Id.* at 42-43. They were all injured while performing duties related to the maintenance and repair of the coal loading equipment. In holding that all three workers had maritime status under the LHWCA, the Court stated,

> Although we have not previously so held, we are quite sure that employees who are injured while maintaining or repairing equipment essential to the loading or unloading process are covered by the Act. Such employees are engaged in activity that is an integral part of and essential to those overall processes. That is all that § 902(3) requires. Coverage is not limited to employees who are denominated "longshoremen" or who physically handle the cargo. Nor are maintenance employees removed from coverage if they also have duties not integrally connected with the loading or unloading functions. Someone who repairs or maintains a piece of loading equipment is just as vital to and an integral part of the loading process as the operator of the equipment. When machinery breaks down or becomes clogged or fouled because of the lack of cleaning, the loading process stops until the difficulty is cured. It is irrelevant that an employee's contribution to the loading process is not continuous or that repair or maintenance is not always needed. Employees are surely covered when they are injured while performing a task integral to loading a ship.

493 U.S. at 47. *See also American Stevedoring Ltd. v. Marinelli*, 248 F3d 54, 58-60 (2d Cir. 2001 (affirming ALJ's finding that union steward's functions in resolving labor disputes and preventing work stoppages was essential to stevedoring operations and rejecting as irrelevant under *Schwalb* employer's claims that (1) non-union stevedores performed better, (2) ships were loaded and unloaded in steward's absence, and (3) steward's duties were not uniquely maritime in nature); *Graziano v. General Dynamics Corp*., 663 F.2d 340, 343 (1980) (employee who performed maintenance and repair work on shipyard production buildings found to be a covered maritime worker because failure to perform maintenance duties would not immediately, but eventually, lead to a stoppage or curtailment of shipbuilding and repair).[4]

The Benefits Review Board has had several occasions to consider the application of Schwalb's "integral and essential" test to shipyard janitors. In *Gonzalez v. Merchants Building Maintenance*, 33 BRBS 146 (1999) (*Gonzalez*), the Board affirmed as rational the ALJ's finding

[4] *Graziano* was decided prior to *Schwalb* but utilized a "necessary link in the chain of work that resulted in ships being built and repaired" analysis that is comparable to *Schwalb's* "integral and essential" test. 663 F.2d at 343.

that a contract janitor who cleaned and restocked restrooms aboard ships and in shipyard production buildings fell short of being an integral part of shipbuilding or repair:

> The administrative law judge determined that decedent's duties were strictly janitorial, and he was in no way performing any tasks connected with the building, repairing, loading or unloading of ships. Decedent's maintenance duties did not involve any equipment used in the shipbuilding process. The administrative law judge therefore concluded that decedent's duties were merely incidental to the shipbuilding operation and did not expose him to any of the hazards of shipbuilding that the Act was designed to cover.

33 BRBS at 148. The Board also noted that this result was consistent with the manner in which two circuit courts had applied *Schwalb*:

> Applying the test enunciated in *Schwalb*, the United States Court of Appeals for the Ninth Circuit, within whose jurisdiction this case arises, held that a claimant was not engaged in "maritime employment" under the Act, since his duties as a messman and cook were not integral or essential to the loading and unloading process. *Coloma v. Director, OWCP*, 897 F.2d 394, 23 BRBS 136 (CRT)(9th Cir. 1990), *aff'g Coloma v. Chevron Shipping Co*., 21 BRBS 200 and 21 BRBS 318 (1988), *cert. denied*, 498 U.S. 818 (1991); *see also Alcala v. Director, OWCP*, 141 F.3d 942, 32 BRBS 81 (CRT)(9th Cir. 1998); *Sea-Land Service, Inc. v. Rock*, 953 F.2d 56, 67, 25 BRBS 112, 121 (CRT)(3rd Cir. 1992). The Ninth Circuit reasoned that, contrary to the fact pattern in *Schwalb*, there was no dependence between claimant's duties as a messman and cook and the loading and unloading processes, as evidenced by the fact that the employer's longshoring operation continued even after the closing of the restaurant in which claimant worked. *Coloma*, 897 F.2d at 394, 23 BRBS at 136 (CRT). Similarly, the United States Court of Appeals for the Third Circuit deems activities "maritime" if they are "an integral or essential part of the chain of events leading up to the loading, unloading, or building of a vessel." *Rock*, 953 F.2d at 67, 25 BRBS at 121 (CRT). The court held that a courtesy van driver was not covered under the Act as his work, although helpful, was not indispensable to the loading process itself.

Id. at 147-148. Subsequent to *Gonzalez*, the Board was presented with two cases in which the ALJ had determined that shipyard “cleaners” who removed shipbuilding debris from production buildings did not perform functions that were essential to the shipbuilding process. *Watkins v. Newport News Shipbuilding and Dry Dock Co.*, 36 BRBS 21 (2002) (*Watkins*); *Ruffin v. Newport News Shipbuilding and Dry Dock Co*., 36 BRBS 52 (2002) (*Ruffin*). The Board reversed the ALJ’s findings in both cases. In *Watkins*, the Board stated,

> In this regard, we hold that the administrative law judge, based on the record before him, erred in failing to draw the inference mandated by *Schwalb*, namely that claimant’s failure to do her job would lead to the kind of shutdowns described in *Schwalb*. Claimant’s job, for four hours every day, was to go to the ships’ sides to empty 55 gallon drums filled with the debris of shipbuilding, namely strips of

> iron and welding rods, as well as trash. The administrative law judge specifically found that welding rods and iron are essential to the shipbuilding process, yet failed to conclude that claimant's failure to remove these items would impede the shipbuilding process. The failure to draw this conclusion is irrational, and the administrative law judge's decision is not supported by substantial evidence. This is not a case where competing inferences can be drawn from the record evidence. Rather, given the facts that welding rods and iron are essential to shipbuilding, the trash barrels are filled with this debris, and that claimant spends four hours every day emptying the barrels, the only possible conclusion is that claimant's failure to remove them eventually would lead to such a build-up of trash that work on the ships could not continue. Thus, claimant's work is essential to the shipbuilding process.

36 BRBS at 23-24 (citations and footnotes omitted).[5] The Board similarly held in *Ruffin* that the ALJ should have inferred from the undisputed facts that the cleaner's duties were essential to the employer's shipbuilding and distinguishable from those of janitors who merely cleaned offices and bathrooms:

> In the present case, claimant was required to sweep around the machines in the machine shop, pick up metal shavings and debris dropped from the machinery as well as any waste materials left by the machinists, empty 55-gallon drums which contained the waste products, and stock eye safety supplies like eye wash and wipes for goggles. Claimant also testified that discarded pieces of metal would end up on the floor, and she would have to sweep these up. Significantly, claimant performed her job while the machines were in operation. Moreover, claimant distinguished her job as an industrial cleaner from that of the "janitors" who cleaned the offices on the second floor of her building and the restrooms. For example, claimant had to wear a hard hat and safety goggles to perform her

[5] The Board also noted that the claimant in *Watkins* cited the Occupational Safety and Health Administration's regulations at 29 C.F.R. Part 1915 ("OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR SHIPYARD EMPLOYMENT") as supporting her position that the removal of shipbuilding debris from the production areas is essential to shipbuilding. The claimant relied on section 1915.91 ("Housekeeping") which in pertinent part states,

> The provisions of this section shall apply to ship repairing, shipbuilding and shipbreaking except that paragraphs (c) and (e) of this section do not apply to shipbreaking.
>
> (a) Good housekeeping conditions shall be maintained at all times. Adequate aisles and passageways shall be maintained in all work areas. All staging platforms, ramps, stairways, walkways, aisles, and passageways on vessels or dry docks shall be kept clear of all tools, materials, and equipment except that which is in use, and all debris such as welding rod tips, bolts, nuts, and similar material. Hose and electric conductors shall be elevated over or placed under the walkway or working surfaces or covered by adequate crossover planks.
>
> (b) All working areas on or immediately surrounding vessels and dry docks, graving docks, or marine railways shall be kept reasonably free of debris, and construction material shall be so piled as not to present a hazard to employees.

29 C.F.R. § 1915.91.

job and she removed industrial waste whereas office janitors removed primarily paper trash from plastic waste baskets, and dusted and vacuumed.

The conclusion mandated by this uncontradicted evidence is that claimant's work was integral to the shipbuilding and repair process. Claimant removed metal shavings and discarded metal and other debris from around the machinery while the machines were in operation. As claimant and the Director contend, if the removal of the debris was not integral to the shipbuilding and repair operation, claimant could have performed her job after hours, when there was less risk of injury from the machinery. Moreover, given the facts of this case, it defies logic and, more importantly, the Supreme Court's decision in *Schwalb*, to require the claimant to demonstrate specifically how quickly the debris accumulates and the effects of claimant's failure to perform her job.

36 BRBS at 55 (underlining supplied; internal transcript citations omitted). Following *Watkins* and *Ruffin*, the Board affirmed an ALJ's decision that a worker who maintained air conditioning equipment in shipyard production buildings was a covered maritime worker. *Sumler v. Newport News Shipbuilding and Dry Dock Co*., 36 BRBS 97, 101-102 (2002). In affirming the ALJ's coverage determination, the Board rejected the employer's arguments that the air conditioning system was not an integral part of and essential to the shipbuilding process:

In challenging the administrative law judge's finding that claimant's work changing air conditioning filters was integral to employer's shipbuilding operations, employer avers that there is no evidence to suggest that ventilation in its fabrication facilities would be impeded without the claimant to occasionally change the filters and that air conditioning itself is merely a comfort measure, incidental to the shipbuilding process. To the contrary, as set forth in the preceding summary of the evidence of record, employer's own witness, Mr. Dyke, testified that Claimant's work duties included the continuous changing of filters in employer's shipyard buildings where ship fabrication and construction was performed. He further testified that the filters in those areas of the shipyard where fabrication occurred were changed on a frequent basis. This evidence, credited by the administrative law judge, supports his conclusion that claimant's work was integral. In contrast, there is no evidence that claimant's work was not necessary to the operation of shipyard equipment. We hold, therefore, that on the basis of this uncontradicted evidence the administrative law judge properly determined that claimant's work changing the filters in the fabrication shops was integral to employer's shipbuilding and ship repair process.

Moreover, we reject employer's contention that Mr. Dyke's testimony that air conditioning was first introduced in employer's shipyard in the 1950's, see Tr. at 37, demonstrates that air conditioning is merely a comfort measure, and is thus merely incidental to the shipbuilding process. As argued by both the Director and claimant, it defies common sense to suggest that employer would have incurred the considerable expense of installing and maintaining an air conditioning system for the past fifty years if such a system were not required in order for employer to

> operate a competitive shipbuilding operation in the Commonwealth of Virginia. Employer's reliance on testimony that air conditioning was first introduced in its facilities in the 1950's fails to account for any technological advances or innovations in its shipbuilding operations introduced during or subsequent to the 1950's which would require the use of air conditioning. Furthermore, employer's reliance on only that portion of Mr. Dyke's testimony that the shipyard operated without air conditioning until the 1950's does not take into account Mr. Dyke's further testimony, that the filters in areas in which construction occurs need to be changed more frequently than in other areas of the shipyard; this testimony clearly supports the inference that a properly maintained air conditioning, or ventilation, system in employer's production areas is essential to employer's shipbuilding operations.
>
> Next, we reject employer's contention that the evidence does not establish that ventilation in the fabrication shops would be impeded without claimant's work changing the filters in those areas. It would be inconsistent with the Supreme Court's decision in *Schwalb* to require claimant to demonstrate with specific evidence, such as the level of particulates in the air in the shipyard fabrication shops or the frequency with which air conditioning filters require changing, the effects of claimant's failure to perform her job. Moreover, claimant is not required to demonstrate that the effect on the air conditioning system would be immediate were she not to replace the filters; rather, her work is considered essential if her failure to replace the filters would eventually impede the operation of the air conditioning system. As the only evidence of record supports the conclusion that claimant's work was essential to the continued functioning of the employer's shipyard's air conditioning system, and that this system was integral to employer's shipyard operations, the administrative law judge's finding of Section 2(3) coverage is affirmed.

Id. at 101-102 (citations and footnotes omitted).

The Claimant acknowledges that the Board has not overruled *Gonzalez*, but she argues that *Gonzalez* is "clearly inconsistent" with *Watkins*. Cl. Opp. at 3.[6] She also cites the OSHA shipbuilding regulation on washing facilities at 29 C.F.R. 1915.97(b)[7] as additional support for her position that cleaning bathrooms used by production personnel was essential to EBC's

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[6] In *Watkins* and *Ruffin*, the Board did not cite or attempt to distinguish its earlier decision in *Gonzalez*.

[7] Section 1915.97(b) provides,

> The employer shall provide adequate washing facilities for employees engaged in the application of paints or coatings or in other operations where contaminants can, by ingestion or absorption, be detrimental to the health of the employees. The employer shall encourage good personal hygiene practices by informing the employees of the need for removing surface contaminants by thorough washing of hands and face prior to eating or smoking.

29 C.F.R. § 1915.97(b).

shipbuilding activities. *Id.* However, the Board in *Ruffin* specifically noted that the cleaner's removal of shipbuilding debris from production areas was distinguishable from the work performed by janitors who cleaned offices and bathrooms, and it based its finding that the cleaner's work was integral and essential in part on the fact that the removal of shipbuilding debris was done in production areas and while the production machinery was in operation. Here, the Claimant states that she cleaned bathrooms used by production workers, but only on weekends. In contrast to the *Watkins* and *Ruffin* claimants, she has presented no evidence that she cleaned shipbuilding debris from production areas while shipbuilding operations were ongoing or that she even cleaned bathrooms or offices in production areas while production was ongoing. Even viewing the undisputed facts in a light most favorable to the Claimant, I find that it would not be reasonable to infer that failure to perform her janitorial duties would lead to a shutdown of EBC's shipbuilding operations. While one can certainly speculate that complete neglect of office space and bathrooms could eventually produce such an overwhelming state of environmental degradation that EBC's shipbuilding work might be adversely impacted, this is not the same as finding that the Claimant's janitorial duties are an integral part of and essential to the shipbuilding process as opposed to being merely helpful.

In conclusion, I find that: (1) the Claimant has not shown that there is any question of material fact warranting an evidentiary hearing: (2) the undisputed facts in this case are not materially distinguishable from *Gonzalez*; and (3) in the absence of any more recent precedent overruling *Gonzalez*, EBC is entitled to summary decision on the maritime status issue as a matter of law.

III. Order

The motion for summary decision is **ALLOWED**, and the claim for benefits under the LHWCA is **DISMISSED**. The hearing scheduled to convene on September 11, 2007 in New London, Connecticut is **CANCELED**.

SO ORDERED.

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DANIEL F. SUTTON
Administrative Law Judge

Boston, Massachusetts